



## **CHEROKEE NATION**

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To Whom It May Concern,

I was pleased to hear NPR Wade Goodwyn's story about the Indian Child Welfare Act ("ICWA") and the Texas federal court case that dealt with the constitutionality of the law. I was surprised yesterday when I saw the Native American Journalists Association's (NAJA) statement in response to the article. I am no stranger to media coverage of ICWA and was confused that a Native organization was so upset with this coverage.

Some background that explains the formulation of my opinion: I am the Deputy Attorney General and an enrolled citizen of the Cherokee Nation. I am also a mom to three Cherokee children. I have been an attorney for Cherokee Nation for 10 years and have litigated hundreds (last count more than 400) of ICWA cases, including as lead attorney for the Cherokee Nation in *Adoptive Couple v. Baby Girl*, the "Baby Veronica" case. I have dedicated my legal career to defending the Indian Child Welfare Act and believe it is the most important piece of federal Indian legislation ever passed. I have personally interacted with numerous Indian families who were able to retain custody of their children due to the Act. And I have met many adult adoptees that were thankful ICWA allowed them to remain connected to their family and tribe and many others who only wish ICWA would have applied to them. ICWA was also at the center of the most difficult day of my professional life, when despite the fact the law was meant to prevent the separation of Indian children from their families and tribes, I had to physically remove Veronica Brown from her father and extended Cherokee family and hand her off to her adoptive parents. I am an Indian woman, a lawyer and advocate for this law. I believe in it and work daily to protect it.

I think some of the reaction by NAJA to the NPR coverage is fueled by a lack of knowledge of the federal court case, *Texas v. Zinke*. In that case, a federal court Judge held that ICWA was unconstitutional because it applied based on the race of a child. The reporter was not making that inference, he was reporting what the judge's ruling was based on. The decision is incorrect, but it is there. Cherokee Nation and three other tribes have been joined by the United States in appealing the decision. The judge's decision is the first time ever that a court has struck down ICWA because a judge considered it race-based. The NPR Reporter, who is from Dallas, was familiar with the judge and the case in Texas.

NAJA has several criticisms of the story, one of which I agree with, however, I believe it is addressed. NAJA stated:

Goodwyn says "It turned out that Mason's mother – and therefore – Mason, was part Indian." This is a misleading and incorrect statement: The child's mother is a tribal citizen, therefore the child is also a tribal citizen. This designation is foundational to federal Indian law. To frame it otherwise is inaccurate and irresponsible, especially given the sensitivity owed to children involved in ICWA cases. Goodwyn also discloses the identity of a child involved in adoption proceedings – a violation of their safety and privacy.

While I agree that the story should clarify that ICWA applies based on tribal membership and not being racially Indian, it does so in the closing words of the story. Goodwyn asks, "Is the Indian Child Welfare Act an unfair racial preference or a legal acknowledgment that Indians have citizenship rights as both Americans and members of their Sovereign tribes?"

That is the exact question that will be answered by the Fifth Circuit on appeal and possibly, eventually the United States Supreme Court. The reporter in the opening line of the story is merely weighing what our tribe has been fighting in court. As a responsible journalist he is required to tell both sides and that is why it is framed in that manner. It's not his argument, it is the argument of the adoptive families in the Texas court. And while I know what the answer is and should be; it is not unfair for a journalist to present the other side of an argument that recently prevailed in court.

I also agree with NAJA that the statements from the foster parents about the child not looking Indian are problematic, but those statements were not endorsed by NPR. They were provided by a critic of the law. And they are very often argued in court cases and the media. As far as the comments by the Goldwater Institute, the arguments made by their representative are those that recently prevailed in court. Six months ago, we could have said they were factually incorrect and misinformed, but now that our anti-ICWA opponents have prevailed using those arguments in court, we must continue to have a conversation about the validity of those arguments. I do not believe anything in the story was factually inaccurate and definitely do not agree with the characterization that the coverage was unethical.

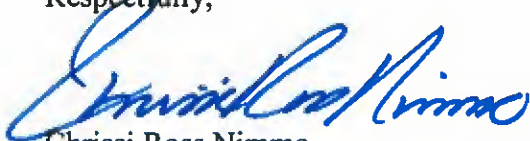
I think the biggest disservice of the harsh criticism of the story is that it overshadows what Mr. Goodwyn got right. First, ICWA coverage often omits the history of ICWA, including the rampant abuse of child welfare practices that allowed one third of all Indian children to be taken from their families as recently as the 1970s. The story conveyed accurately how these horrific practices and assimilation policies lead to the need for and passage of ICWA. Mr. Goodwyn also did what many reporters of native issues are criticized for not doing. He traveled to and spent time in the Cherokee Nation. He spent time with our people and highlighted not poverty or poor health or substance abuse (issues often the focus of native coverage) or casinos, but our schools, language, and culture. He also called our tribe at least five times fact checking his article or doing follow up interviews to ensure accuracy. Mr. Goodwyn showed advanced knowledge of the subject matter and respect for this issue.

But I think the most important part of the story that was overshadowed by the negative reaction was the interview with Juli Skinner. ICWA coverage routinely leaves silent the voices of those who were protected by the law. Juli is a friend and a colleague. She was one of the tribal ICW workers assigned to Veronica's case. We traveled together to South Carolina. Back home we regularly had meals and visited with Veronica's family. She too was deeply affected by the outcome of that case. Juli went on to get her master's degree and now runs the HERO Project for Cherokee Nation which provides mental health services to Cherokee children. Her story is not only how ICWA saved her and her sister, but how being raised by her family and in her tribe instilled in her a selfless need to give back and care for those in our community who are the most vulnerable.

In the passage of ICWA, Congress found "that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children." It was true in 1978 and it is true today. And all of us who are advocates for Indian families must continue to fight to protect this law.

I hope NAJA continues to call attention to truly problematic coverage of Native issues, specifically ICWA, but I also hope they reconsider their reaction to this story and practices of the reporter, which I felt were fair and accurate. And I hope that Mr. Goodwyn and NPR continue to learn about Indian communities and continue to cover this very important issue.

Respectfully,



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Deputy Attorney General